

ASSEMBLY BILL

No. 846

Introduced by Assembly Member Blakeslee
(Coauthor: Assembly Member Karnette)
(Coauthor: Senator Maldonado)

February 22, 2007

An act to amend and repeal Section 6385 of, to add Section 60510 to, and to add and repeal Sections 6357.7, 6357.8 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 846, as introduced, Blakeslee. Sales and use taxes: exemptions: Clean Marine Fuels Tax Incentive Act.

(1) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax.

This bill would exempt, until specified State Board of Equalization determinations occur or specified federal actions occur, from those state taxes the gross receipts derived from the sale in this state of, and the storage, use, or other consumption in this state of, low-sulfur fuel products for use in a vessel's auxiliary or main engine sold to a water common carrier for use in California's territorial or internal waters, as provided.

(2) The Sales and Use tax law exempts, until 2014, the gross receipts from the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination, if specified conditions are met.

This bill would instead provide that the exemption is repealed when a federal exemption for similar sales to vessel and aircraft is repealed, and specified State Board of Equalization actions are taken, upon any notification of the repeal of the federal exemption.

(3) The Diesel Fuel Tax Law imposes a tax, with specified exemptions, at specified rates, upon the specified removal, entry, sale, delivery, and specified use of diesel fuel, as provided, for each gallon of fuel subject to the tax. Existing law provides for certain refunds of that tax if specified criteria are met and the diesel fuel was used for a specified purpose, including that the diesel fuel was used for purposes other than operating motor vehicles upon the public highways of the state.

This bill would provide that if a refund is claimed because the diesel fuel was used for purposes other than operating motor vehicles upon the public highways, the diesel fuel was used in a vessel, and the diesel fuel has a sulfur content greater than 5,000 parts per million, the refund shall be reduced by a specified amount, as provided.

(4) Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Clean Marine Fuels Tax Incentive Act.
- 3 SEC. 2. Section 6357.7 is added to the Revenue and Taxation
- 4 Code, to read:

6357.7. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, low-sulfur fuel products for use in a vessel's auxiliary engine, sold to a water common carrier inside this state for immediate consumption or shipment in the conduct of its business as a water common carrier in California's territorial or internal waters.

(b) To qualify for the exemption, the water common carrier shall furnish to the seller an exemption certificate, in the form prescribed by the board, stating the quantity of low-sulfur fuel products for use in a vessel's auxiliary engines claimed as exempt that are to be consumed within California's territorial or internal waters. The certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax exempted under this section.

(c) For purposes of this section:

(1) "Immediate consumption or shipment" means that the delivery of the low-sulfur fuel products for use in a vessel's auxiliary engine by the seller is directly into a vessel for consumption by that vessel while in California's territorial or internal waters, and is not used for storage by the purchaser or any third party.

(2) "Low-sulfur fuel products for use in a vessel's auxiliary engine," means any fuel, including heavy fuel oil, marine distillate fuels, marine gas oil, marine diesel oil, or any other diesel fuel, with a sulfur content of no greater than 0.05 percent, or 500 parts per million, that is purchased for use in the operation of an engine, on a vessel, that provides power for a use other than propulsion.

(3) "Territorial or internal waters" means waters within a seaward boundary three geographical miles into the Pacific Ocean measured from the mean low-water mark of the California coast, all interior navigable waterways, and the Monterey Bay, subject to definitions of the United Nations Convention on the Law of the Sea.

(4) "Water common carrier" has the same meaning as "common carrier" as set forth in Section 6385.

(d) (1) Any water common carrier claiming exemption under this section that is not required to hold a valid seller's permit, shall be required to register with the board and obtain a fuel exemption

1 registration number, and shall be required to file returns as the
2 board may prescribe, either if the board notifies the carrier that
3 returns must be filed or if the carrier is liable for taxes based upon
4 consumption of fuel products erroneously claimed as exempt under
5 this section.

6 (2) A water common carrier required to hold a fuel exemption
7 registration number shall be subject to all applicable provisions of
8 this part, Part 1.5 (commencing with Section 7200), and Part 1.6
9 (commencing with Section 7251).

10 (3) Upon approval of the board, a water common carrier may
11 utilize a single fuel exemption registration number for all
12 exemptions claimed under this chapter.

13 (e) A water common carrier claiming an exemption under this
14 section, upon request, shall make available to the board records,
15 including, but not limited to, a copy of a log abstract, or a cargo
16 manifest, documenting its consumption of low-sulfur fuel products
17 for use in a vessel's auxiliary engine while in California's territorial
18 and internal waters and the amount claimed as exempt. If the carrier
19 fails to provide these records upon request, the board may revoke
20 the carrier's fuel exemption registration number.

21 (f) The board may require any water common carrier claiming
22 an exemption under this section and required to obtain a fuel
23 exemption registration number, to place with it such security as
24 the board may determine pursuant to Section 6701.

25 (g) Pursuant to this section, any use of the fuel products by the
26 purchasing carrier, other than that incident to the delivery of the
27 fuel products to the carrier and the immediate consumption or
28 transportation of the fuel products by the carrier for use in the
29 conduct of its business as a water common carrier, or a failure of
30 the carrier to document its consumption of the fuel products in
31 California's territorial or internal waters, shall subject the carrier
32 to liability for payment of sales tax as if it were a retailer making
33 a retail sale of the property at the time of that use or failure, and
34 the sales price of the property to it shall be deemed to be the gross
35 receipts from the retail sale.

36 (h) In the event the board finds that sales of low-sulfur fuel
37 products for use in a vessel's auxiliary engine sold to water
38 common carriers inside this state accounts for greater than 95
39 percent of all sales of marine fuels to water common carriers for
40 use in a vessel's auxiliary engine, this section is hereby repealed

1 six months from the date such finding is submitted to the
2 Legislature and the Office of Administrative Law for publication
3 in the state register.

4 SEC. 3. Section 6357.8 is added to the Revenue and Taxation
5 Code, to read:

6 6357.8. (a) There are exempted from the taxes imposed by
7 this part, the gross receipts from the sale in this state of, and the
8 storage, use, or other consumption of, low-sulfur fuel products for
9 use in a vessel's main engine, sold to a water common carrier for
10 immediate consumption or shipment in the conduct of its business
11 as a water common carrier until the first out-of-state destination
12 or 500 nautical miles beyond California's territorial waters,
13 whichever is less.

14 (b) To qualify for the exemption, the water common carrier
15 shall furnish to the seller an exemption certificate, in the form
16 prescribed by the board, stating the quantity of low-sulfur fuel
17 products for use in a vessel's main engines claimed as exempt.
18 The certificate shall bear the purchaser's valid seller's permit
19 number or valid fuel exemption registration number. Acceptance
20 in good faith of that certificate shall relieve the seller from liability
21 for the sales tax exempted under this section.

22 (c) For purposes of this section:

23 (1) "Immediate consumption or shipment" means that the
24 delivery of the low-sulfur fuel products for use in a vessel's main
25 engine by the seller is directly into a vessel for consumption by
26 that vessel alone until the first out-of-state destination or 500 miles
27 beyond California's territorial waters and not used for storage by
28 the purchaser or any third party.

29 (2) "First out-of-state destination" has the same meaning as set
30 forth in Section 6385.

31 (3) "Low-sulfur fuel products for use in a vessel's main engine"
32 means any fuel, including heavy fuel oil, marine distillate fuels,
33 marine gas oil, marine diesel oil, or any other diesel fuel, with a
34 sulfur content of no greater than 1.5 percent, or 15,000 parts per
35 million, which is purchased for use in the operation of an engine,
36 on a vessel, that provides power for propulsion.

37 (4) "Territorial waters" means waters within a seaward boundary
38 three geographical miles into the Pacific Ocean measured from
39 the mean low-water mark of the California coast, and the Monterey

1 Bay, subject to definitions of the United Nations Convention on
2 the Law of the Sea.

3 (5) “Water common carrier” has the same meaning as “common
4 carrier” as set forth in Section 6385.

5 (d) (1) Any water common carrier claiming exemption under
6 this section that is not required to hold a valid seller’s permit, shall
7 be required to register with the board and obtain a fuel exemption
8 registration number, and shall be required to file returns as the
9 board may prescribe, either if the board notifies the carrier that
10 returns must be filed or if the carrier is liable for taxes based upon
11 consumption of fuel products erroneously claimed as exempt under
12 this section.

13 (2) A water common carrier required to hold a fuel exemption
14 registration number shall be subject to all applicable provisions of
15 this part, Part 1.5 (commencing with Section 7200), and Part 1.6
16 (commencing with Section 7251).

17 (3) Upon approval of the board, a water common carrier may
18 utilize a single fuel exemption registration number for all
19 exemptions claimed under this chapter.

20 (e) A water common carrier claiming an exemption under this
21 section upon request, shall make available to the board records,
22 including, but not limited to, a copy of a log abstract, or a cargo
23 manifest, documenting its consumption of low-sulfur fuel products
24 for use in a vessel’s auxiliary engine while in California’s territorial
25 and internal waters and the amount claimed as exempt. If the carrier
26 fails to provide these records upon request, the board may revoke
27 the carrier’s fuel exemption registration number.

28 (f) The board may require any water common carrier claiming
29 an exemption under this section and required to obtain a fuel
30 exemption registration number, to place with it such security as
31 the board may determine pursuant to Section 6701.

32 (g) Pursuant to this section, any use of the fuel products by the
33 purchasing carrier, other than that incident to the delivery of the
34 fuel products to the carrier and the immediate consumption or
35 transportation of the fuel products by the carrier for use in the
36 conduct of its business as a water common carrier, or a failure of
37 the carrier to document its consumption of the fuel products in
38 California’s territorial or internal waters, shall subject the carrier
39 to liability for payment of sales tax as if it were a retailer making
40 a retail sale of the property at the time of that use or failure, and

1 the sales price of the property to it shall be deemed to be the gross
2 receipts from the retail sale.

3 (h) In the event the United States Environmental Protection
4 Agency establishes a Sulfur Emission Control Area under the
5 provisions of Annex VI of the International Convention for the
6 Prevention of Pollution from Ships, 1973, as amended at London
7 in February 1978, provided in Section 1309 of Title 19 of the
8 United States Code, or otherwise defines and sets standards for
9 the regulation for the prevention of sulfur emissions from ships
10 regardless of their country of origin, relating to California's
11 territorial waters, this section is hereby repealed six months from
12 the date the board, upon any notification of this action, submits
13 this information to the Legislature and the Office of Administrative
14 law for publication in the state register.

15 SEC. 4. Section 6385 of the Revenue and Taxation Code, as
16 added by Section 3 of Chapter 712 of the Statutes of 2003, is
17 amended to read:

18 6385. (a) There are exempted from the computation of the
19 amount of the sales tax the gross receipts from the sale of tangible
20 personal property, other than fuel and petroleum products, to a
21 common carrier, shipped by the seller via the purchasing carrier's
22 facilities under a bill of lading whether the freight is paid in
23 advance, or the shipment is made freight charges collect, to a point
24 outside this state and the property is actually transported to the
25 out-of-state destination for use by the carrier in the conduct of its
26 business as a common carrier.

27 (b) There are exempted from the computation of the amount of
28 the sales tax the gross receipts from the sale of tangible personal
29 property, other than aircraft fuel and petroleum products, purchased
30 by a foreign air carrier and transported by the foreign air carrier's
31 facilities to a foreign destination for use by the air carrier in the
32 conduct of its business as a common carrier by air of persons or
33 property. To qualify for this exemption, the foreign air carrier shall
34 furnish to the seller a certificate in writing that the property shall
35 be transported and used in the manner required in this subdivision.
36 The certificate shall be substantially in the form prescribed by the
37 board. A seller is not liable for the sales tax if the seller accepts
38 the certificate in good faith. If the seller does not have the
39 certificate at the time the board requests the seller to submit the
40 certificate to the board, the seller shall be given a reasonable time

1 to request the foreign air carrier to provide the seller with the
2 certificate. The foreign air carrier shall maintain records in this
3 state, such as a copy of a bill of lading, an air waybill, or cargo
4 manifest, documenting its transportation of the tangible personal
5 property to a foreign destination.

6 (c) There are exempted from the computation of the amount of
7 the sales tax the gross receipts from the sale of fuel and petroleum
8 products to a water common carrier, for immediate shipment
9 outside this state for consumption in the conduct of its business as
10 a common carrier after the first out-of-state destination. To qualify
11 for the exemption the common carrier shall furnish to the seller
12 an exemption certificate in writing stating the quantity of fuel and
13 petroleum products claimed as exempt which is to be consumed
14 after reaching the first out-of-state destination. That certificate
15 shall bear the purchaser's valid seller's permit number or valid
16 fuel exemption registration number and shall be substantially in
17 the form prescribed by the board. Acceptance in good faith of that
18 certificate shall relieve the seller from liability for the sales tax.

19 (d) "First out-of-state destination," as used in this section, means
20 the first point reached outside this state by a common carrier in
21 the conduct of its business as a common carrier at which cargo or
22 passengers are loaded or discharged, cargo containers are added
23 or removed, fuel is bunkered, or docking fees are charged. "First
24 out-of-state destination," as used in this section, also includes the
25 entry point of the Panama Canal when the carrier is only transiting
26 the canal in the conduct of its business as a common carrier.

27 (e) "Common carrier," as used in this section, with respect to
28 water transportation, shall be deemed to include any vessel
29 engaged, for compensation, in transporting persons or property in
30 interstate or foreign commerce.

31 (f) "Foreign air carrier," as used in this section, means a foreign
32 air carrier as defined in Section 40102 of Title 49 of the United
33 States Code.

34 (g) "Immediate shipment," as used in this section, means that
35 the delivery of the fuel and petroleum products by the seller is
36 directly into a ship for transportation outside this state and not for
37 storage by the purchaser or any third party.

38 (h) Any common carrier claiming exemption under subdivision
39 (c) ~~who~~ that is not required to hold a valid seller's permit shall be
40 required to register with the board and obtain a fuel exemption

1 registration number and shall be required to file returns as the
2 board may prescribe if either the board notifies the carrier that
3 returns must be filed or the carrier is liable for taxes based upon
4 consumption of fuel erroneously claimed as exempt under this
5 section. A common carrier required to hold a fuel exemption
6 registration number shall be subject to all applicable provisions of
7 this part, Part 1.5 (commencing with Section 7200), and Part 1.6
8 (commencing with Section 7251).

9 (i) A common carrier claiming an exemption under subdivision
10 (c), upon request, shall make available to the board records,
11 including, but not limited to, a copy of a log abstract or a cargo
12 manifest, documenting its transportation of the fuel or petroleum
13 product to an out-of-state destination and the amount claimed as
14 exempt. If the carrier fails to provide these records upon request,
15 the board may revoke the carrier's fuel exemption registration
16 number.

17 (j) The board may require any carrier claiming an exemption
18 under this section and required to obtain a fuel exemption
19 registration number to place with it that security as the board may
20 determine pursuant to Section 6701.

21 (k) Pursuant to subdivisions (a), (b), and (c), any use of the
22 property by the purchasing carrier, other than that incident to the
23 delivery of the property to the carrier and the transportation of the
24 property by the carrier to the first out-of-state destination and
25 subsequent use in the conduct of its business as a common carrier,
26 or a failure of the carrier to document its transporting the property
27 to the first out-of-state destination, shall subject the carrier to
28 liability for payment of sales tax as if it were a retailer making a
29 retail sale of the property at the time of that use or failure, and the
30 sales price of the property to it shall be deemed to be the gross
31 receipts from the retail sale.

32 (l) On December 31, 2005, the Legislative Analyst's Office
33 (LAO) shall submit a report to the Governor and the Legislature
34 that evaluates the economic impact of the partial sales tax
35 exemption regarding bunker fuel.

36 ~~(m) This section shall remain in effect only until January 1,~~
37 ~~2014, and as of that date is repealed.~~

38 *(m) In the event the federal exemption provided by Section 1309*
39 *of Title 19 of the United States Code, relating to supplies for*
40 *certain vessels and aircraft, is repealed, this section is repealed*

1 *six months from the date the board, upon any notification of this*
2 *action, submits this information to the Legislature and the Office*
3 *of Administrative Law for publication in the state register.*

4 SEC. 5. Section 6385 of the Revenue and Taxation Code, as
5 added by Section 4 of Chapter 712 of the Statutes of 2003, is
6 repealed.

7 ~~6385. (a) There are exempted from the computation of the~~
8 ~~amount of the sales tax the gross receipts from the sale of tangible~~
9 ~~personal property, other than fuel and petroleum products, to a~~
10 ~~common carrier, shipped by the seller via the purchasing carrier's~~
11 ~~facilities under a bill of lading whether the freight is paid in~~
12 ~~advance, or the shipment is made freight charges collect, to a point~~
13 ~~outside this state and the property is actually transported to the~~
14 ~~out-of-state destination for use by the carrier in the conduct of its~~
15 ~~business as a common carrier.~~

16 ~~(b) There are exempted from the computation of the amount of~~
17 ~~the sales tax the gross receipts from the sale of tangible personal~~
18 ~~property, other than aircraft fuel and petroleum products, purchased~~
19 ~~by a foreign air carrier and transported by the foreign air carrier's~~
20 ~~facilities to a foreign destination for use by the air carrier in the~~
21 ~~conduct of its business as a common carrier by air of persons or~~
22 ~~property. To qualify for this exemption, the foreign air carrier shall~~
23 ~~furnish to the seller a certificate in writing that the property shall~~
24 ~~be transported and used in the manner required in this subdivision.~~
25 ~~The certificate shall be substantially in the form prescribed by the~~
26 ~~board. A seller is not liable for the sales tax if the seller accepts~~
27 ~~the certificate in good faith. If the seller does not have the~~
28 ~~certificate at the time the board requests the seller to submit the~~
29 ~~certificate to the board, the seller shall be given a reasonable time~~
30 ~~to request the foreign air carrier to provide the seller with the~~
31 ~~certificate. The foreign air carrier shall maintain records in this~~
32 ~~state, such as a copy of a bill of lading, an air waybill, or cargo~~
33 ~~manifest, documenting its transportation of the tangible personal~~
34 ~~property to a foreign destination.~~

35 ~~(c) "Common carrier," as used in this section, with respect to~~
36 ~~water transportation, shall be deemed to include any vessel~~
37 ~~engaged, for compensation, in transporting persons or property in~~
38 ~~interstate or foreign commerce.~~

1 (d) ~~“Foreign air carrier,” as used in this section, means a foreign~~
2 ~~air carrier as defined in Section 40102 of Title 49 of the United~~
3 ~~States Code.~~

4 (e) ~~Pursuant to subdivisions (a) and (b), any use of the property~~
5 ~~by the purchasing carrier, other than that incident to the delivery~~
6 ~~of the property to the carrier and the transportation of the property~~
7 ~~by the carrier to an out-of-state destination and subsequent use in~~
8 ~~the conduct of its business as a common carrier, or a failure of the~~
9 ~~carrier to document its transporting the property to an out-of-state~~
10 ~~destination, shall subject the carrier to liability for payment of sales~~
11 ~~tax as if it were a retailer making a retail sale of the property at~~
12 ~~the time of that use or failure, and the sales price of the property~~
13 ~~to it shall be deemed to be the gross receipts from the retail sale.~~

14 (f) ~~This section shall become operative on January 1, 2014.~~

15 SEC. 6. Section 60510 is added to the Revenue and Taxation
16 Code, to read:

17 60510. (a) Any claim for a refund made pursuant to Section
18 60501 where the diesel fuel was sold and delivered directly by an
19 ultimate vendor to a vessel operated by an ultimate purchaser, the
20 diesel fuel sold has a sulfur content of greater than 0.5 percent, or
21 5,000 parts per million, and the diesel fuel was used for purposes
22 other than operating motor vehicles upon the public highways of
23 this state, shall be reduced by an amount equal to:

24 (1) Twenty-five percent of the claim, for all claims made after
25 the effective date of this section and prior to January 1, 2010.

26 (2) Fifty percent of the claim, for all claims made on or after
27 January 1, 2010, and prior to January 1, 2012.

28 (3) Seventy-five percent of the claim, for all claims made on or
29 after January 1, 2012.

30 (b) For purposes of this section, “vessel” has the same meaning
31 as set forth in Section 6273.

32 (c) In the event that the board makes a finding pursuant to
33 subdivision (h) of Section 6357.7, this section is hereby repealed
34 six months from the date such finding is submitted to the
35 Legislature and the Office of Administrative Law for publication
36 in the state register.

37 SEC. 7. Notwithstanding Section 2230 of the Revenue and
38 Taxation Code, no appropriation is made by this act and the state
39 shall not reimburse any local agency for any sales and use tax
40 revenues lost by it under this act.

1 SEC. 8. This act provides for a tax levy within the meaning of
2 Article IV of the Constitution and shall go into immediate effect.
3 However, the provisions of this act shall become operative on the
4 first day of the first calendar quarter commencing more than 90
5 days after the effective date of this act.

O